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RE: Advisory Opinion Request

Dear Ms. Center:

On behalf of our client, City of Louisville Alderman Barbara Gregg, and in accordance with KRS 121.135(1), we request an advisory opinion concerning KRS 121.180(10). Specifically, we request an advisory opinion regarding the expenditure of previously unexpended campaign funds to further Alderman Gregg's campaign for election to the legislative council of Greater Louisville, which replaces and supersedes the City of Louisville Board of Aldermen (*see* KRS 67C.101(1)). The remainder of this letter outlines our research and interpretation of KRS 121.180(10).

Summary

In order to utilize any "unexpended balance of funds" in accordance with KRS 121.180(10), a candidate must seek election to the "same office." Courts analyze the relevant functions of an office and not the title of the office when determining whether the same office is at issue. *See generally Wright v. County School Board of Greenville*, 309 F. Supp. 671, 677 (E.D. Va. 1970). In addition, when analyzing the word "same," courts utilize standard dictionary definitions, which focus on phrases such as "not differing in character or in the quality or qualities compared." *Cobb v. City of Lincoln*, 17 N.W. 365, 366 (Neb. 1883). In the current situation, the position of City of Louisville Alderman will be "replace[d] and supersede[d]" by the legislative council of Greater Louisville, in accordance with KRS 67C.101. Although the name of the new position will differ, the rights and powers will remain the same. Therefore, any unexpended funds Alderman Gregg currently possesses can be used to further her election under KRS 121.180(10) because she will be seeking election to the "same office."

Analysis

1. **KRS 121.180(10)**

KRS 121.180(10) provides in relevant part as follows:

No candidate . . . shall use or permit the use of contributions or funds solicited or received for the person . . . to further the

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candidacy of the person for a different public office [A]n official may retain the funds to . . . seek election to the *same office* [Emphasis added.]

The key issue is the definition of “same office” under this statute.

2. “Same office”

Courts that have evaluated the issue of whether a public office that has undergone a name change would be considered the same office have focused on the rights and powers of the newly named office. The name of the office is irrelevant for the purpose of determining whether it is in fact the “same office.” For example, in *Wright v. County School Board of Greenville*, the court was deciding whether a lawsuit should continue against certain city officials who were not in power at the time the lawsuit was initiated. See 309 F. Supp. at 677. The issue was whether these city officials could be sued even though the title of their office differed from their alleged predecessors. See *id.* The court determined that anyone with the same powers as his or her predecessor would be in fact a successor in office, even if the name of the office were changed. See *id.* The court concluded “it is irrelevant that the city officials hold positions that *differ in name* . . . when the *relevant functions have been moved* from one office to another.” *Id.* [emphasis added.]

Similarly, in *Porter v. American Distilling Co.*, 71 F. Supp. 483 (S.D.N.Y. 1947), the court dealt with a rule of Federal Civil Procedure that allowed an action instituted by or against a public officer to be continued by his successor in office if the action did not relate to the officer personally, but rather to his or her capacity as a public officer. In this case, the public officer resigned, and a new temporary officer had been appointed by the President of the United States. The title of the offices differed as well as some of the reporting duties. See *id.* at 488. The court concluded that the “office” referred to in the rule was the “office to which the ‘official duties’ sought to be conveyed attach.” *Id.* at 489.

In *McLean v. Tennessee*, 1873 Tenn. LEXIS 3 (1873), the Tennessee supreme court dealt with a situation involving revenue collectors and their related sureties. One issue addressed by the court involved whether a surety’s obligation is extinguished if a revenue collector’s office is abolished. See *id.* at 191. The court concluded that if “by the new legislation, the functions and duties be not so changed as to make a new office,” the sureties’ obligations continue. *Id.*

It is clear that these cases support the proposition that a change in name or location of a public office is irrelevant if the functions of the public office remain the same. KRS Chapter 67C provides that the governmental and corporate functions presently vested in the City of Louisville be consolidated with the governmental and corporate functions of Jefferson County. The new single government “replaces and supersedes” the government of the pre-existing city.

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The district boundaries of the office and the name of the office may have changed, but the rights and powers of the office remain the "same" as that of the current City of Louisville Aldermen, just as would be the case were the City of Louisville to continue in its present form, but the boundaries of various aldermanic wards be redrawn. Unlike the case with the County Judge-Executive and the members of the Jefferson County Fiscal Court, whose offices will continue post-merger, the Board of Aldermen's legislative functions will be assumed by the legislative council. The name of the office has changed and the geographic boundaries have changed, but the functions remain the same. The merger statute effects the same result as would have the City of Louisville's annexation of the land mass known as Jefferson County.

Please let me know if you have any questions or if you would like to discuss this issue further before you issue your advisory opinion. You may contact me at my office at (502) 681-0449. We look forward to your response regarding this matter.

Very truly yours,

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Kennedy Helm, III

cc: Alderman Barbara Gregg

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